

AMENDED IN ASSEMBLY MAY 4, 2016
AMENDED IN ASSEMBLY APRIL 26, 2016
AMENDED IN ASSEMBLY MARCH 17, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2454

Introduced by Assembly Member Williams

February 19, 2016

An act to amend Section 454.5 of, and to add Section 921 to, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2454, as amended, Williams. Energy: procurement plans.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act requires the commission to review and accept, modify, or reject a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives. The act requires that an electrical corporation's proposed procurement plan include certain elements, including a showing that the electrical corporation will first meet its unmet needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.

This bill would require the electrical corporation, in determining the availability of cost-effective, reliable, and feasible demand reduction resources, to consider the findings of the Demand Response Potential Study required by a specific order of the commission, as specified.

Under existing law, to the extent that additional procurement is authorized for an electrical corporation, as specified, the commission

is required to ensure that the costs are allocated in a fair and equitable manner to all customers, that there is no cost-shifting among customers of load-serving entities, that community choice aggregators may self-provide renewable integration resources, and that unmet resource needs are met through available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.

This bill would also require the commission to demonstrate to the Legislature, if the commission approves new capacity additions in excess of 100 megawatts, that the electrical corporation met its unmet needs through all available energy efficiency and demand reduction resources that were cost effective, reliable, and feasible. *The bill would require the commission, prior to approving a contract for any new or repowered gas-fired generation resources, to require the electrical corporation to demonstrate that it has undertaken all feasible efforts to meet identified resources needs through available renewable energy, energy storage, energy efficiency, and demand reduction resources that are cost effective, reliable, and feasible.*

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 454.5 of the Public Utilities Code is
2 amended to read:
3 454.5. (a) The commission shall specify the allocation of
4 electricity, including quantity, characteristics, and duration of
5 electricity delivery, that the Department of Water Resources shall
6 provide under its power purchase agreements to the customers of

1 each electrical corporation, which shall be reflected in the electrical
2 corporation's proposed procurement plan. Each electrical
3 corporation shall file a proposed procurement plan with the
4 commission not later than 60 days after the commission specifies
5 the allocation of electricity. The proposed procurement plan shall
6 specify the date that the electrical corporation intends to resume
7 procurement of electricity for its retail customers, consistent with
8 its obligation to serve. After the commission's adoption of a
9 procurement plan, the commission shall allow not less than 60
10 days before the electrical corporation resumes procurement
11 pursuant to this section.

12 (b) An electrical corporation's proposed procurement plan shall
13 include, but not be limited to, all of the following:

14 (1) An assessment of the price risk associated with the electrical
15 corporation's portfolio, including any utility-retained generation,
16 existing power purchase and exchange contracts, and proposed
17 contracts or purchases under which an electrical corporation will
18 procure electricity, electricity demand reductions, and
19 electricity-related products and the remaining open position to be
20 served by spot market transactions.

21 (2) A definition of each electricity product, electricity-related
22 product, and procurement related financial product, including
23 support and justification for the product type and amount to be
24 procured under the plan.

25 (3) The duration of the plan.

26 (4) The duration, timing, and range of quantities of each product
27 to be procured.

28 (5) A competitive procurement process under which the
29 electrical corporation may request bids for procurement-related
30 services, including the format and criteria of that procurement
31 process.

32 (6) An incentive mechanism, if any incentive mechanism is
33 proposed, including the type of transactions to be covered by that
34 mechanism, their respective procurement benchmarks, and other
35 parameters needed to determine the sharing of risks and benefits.

36 (7) The upfront standards and criteria by which the acceptability
37 and eligibility for rate recovery of a proposed procurement
38 transaction will be known by the electrical corporation prior to
39 execution of the transaction. This shall include an expedited
40 approval process for the commission's review of proposed contracts

1 and subsequent approval or rejection thereof. The electrical
 2 corporation shall propose alternative procurement choices in the
 3 event a contract is rejected.

4 (8) Procedures for updating the procurement plan.

5 (9) A showing that the procurement plan will achieve the
 6 following:

7 (A) The electrical corporation, in order to fulfill its unmet
 8 resource needs, shall procure resources from eligible renewable
 9 energy resources in an amount sufficient to meet its procurement
 10 requirements pursuant to the California Renewables Portfolio
 11 Standard Program (Article 16 (commencing with Section 399.11)
 12 of Chapter 2.3).

13 (B) The electrical corporation shall create or maintain a
 14 diversified procurement portfolio consisting of both short-term
 15 and long-term electricity and electricity-related and demand
 16 reduction products.

17 (C) The electrical corporation shall first meet its unmet resource
 18 needs through all available energy efficiency and demand reduction
 19 resources that are cost effective, reliable, and feasible. In
 20 determining the availability of cost-effective, reliable, and feasible
 21 demand reduction resources, ~~the electrical corporation~~ *commission*
 22 shall consider the findings regarding ~~technical, economic, and~~
 23 *technically and economically* achievable demand reduction in the
 24 Demand Response Potential Study required pursuant to
 25 Commission Order D.14-12-024, to the extent those findings are
 26 not superseded by ~~subsequent other demand reduction potential~~
 27 ~~studies, studies conducted by academic institutions or government~~
 28 *agencies*, and to the extent that any demand reduction is consistent
 29 with commission policy.

30 (D) (i) *The electrical corporation shall undertake all feasible*
 31 *efforts to meet any identified resource need through available*
 32 *renewable energy, energy storage, energy efficiency, and demand*
 33 *reduction resources that are cost effective, reliable, and feasible.*

34 (ii) *Prior to approving a contract for any new or repowered*
 35 *gas-fired generation resource, the commission shall require the*
 36 *electrical corporation to demonstrate compliance with clause (i).*

37 (10) The electrical corporation’s risk management policy,
 38 strategy, and practices, including specific measures of price
 39 stability.

1 (11) A plan to achieve appropriate increases in diversity of
2 ownership and diversity of fuel supply of nonutility electrical
3 generation.

4 (12) A mechanism for recovery of reasonable administrative
5 costs related to procurement in the generation component of rates.

6 (c) The commission shall review and accept, modify, or reject
7 each electrical corporation's procurement ~~plan~~. *plan and any*
8 *amendments or updates to the plan. The commission shall ensure*
9 *that the plan contains the elements required pursuant to this*
10 *section, including the elements described in subparagraph (D) of*
11 *paragraph (9) of subdivision (b).* The commission's review shall
12 consider each electrical corporation's individual procurement
13 situation, and shall give strong consideration to that situation in
14 determining which one or more of the features set forth in this
15 subdivision shall apply to that electrical corporation. A
16 procurement plan approved by the commission shall contain one
17 or more of the following features, provided that the commission
18 may not approve a feature or mechanism for an electrical
19 corporation if it finds that the feature or mechanism would impair
20 the restoration of an electrical corporation's creditworthiness or
21 would lead to a deterioration of an electrical corporation's
22 creditworthiness:

23 (1) A competitive procurement process under which the
24 electrical corporation may request bids for procurement-related
25 services. The commission shall specify the format of that
26 procurement process, as well as criteria to ensure that the auction
27 process is open and adequately subscribed. Any purchases made
28 in compliance with the commission-authorized process shall be
29 recovered in the generation component of rates.

30 (2) An incentive mechanism that establishes a procurement
31 benchmark or benchmarks and authorizes the electrical corporation
32 to procure from the market, subject to comparing the electrical
33 corporation's performance to the commission-authorized
34 benchmark or benchmarks. The incentive mechanism shall be
35 clear, achievable, and contain quantifiable objectives and standards.
36 The incentive mechanism shall contain balanced risk and reward
37 incentives that limit the risk and reward of an electrical corporation.

38 (3) Upfront achievable standards and criteria by which the
39 acceptability and eligibility for rate recovery of a proposed
40 procurement transaction will be known by the electrical corporation

1 prior to the execution of the bilateral contract for the transaction.
2 The commission shall provide for expedited review and either
3 approve or reject the individual contracts submitted by the electrical
4 corporation to ensure compliance with its procurement plan. To
5 the extent the commission rejects a proposed contract pursuant to
6 this criteria, the commission shall designate alternative procurement
7 choices obtained in the procurement plan that will be recoverable
8 for ratemaking purposes.

9 (d) A procurement plan approved by the commission shall
10 accomplish each of the following objectives:

11 (1) Enable the electrical corporation to fulfill its obligation to
12 serve its customers at just and reasonable rates.

13 (2) Eliminate the need for after-the-fact reasonableness reviews
14 of an electrical corporation's actions in compliance with an
15 approved procurement plan, including resulting electricity
16 procurement contracts, practices, and related expenses. However,
17 the commission may establish a regulatory process to verify and
18 ensure that each contract was administered in accordance with the
19 terms of the contract, and contract disputes that may arise are
20 reasonably resolved.

21 (3) Ensure timely recovery of prospective procurement costs
22 incurred pursuant to an approved procurement plan. The
23 commission shall establish rates based on forecasts of procurement
24 costs adopted by the commission, actual procurement costs
25 incurred, or combination thereof, as determined by the commission.
26 The commission shall establish power procurement balancing
27 accounts to track the differences between recorded revenues and
28 costs incurred pursuant to an approved procurement plan. The
29 commission shall review the power procurement balancing
30 accounts, not less than semiannually, and shall adjust rates or order
31 refunds, as necessary, to promptly amortize a balancing account,
32 according to a schedule determined by the commission. Until
33 January 1, 2006, the commission shall ensure that any
34 overcollection or undercollection in the power procurement
35 balancing account does not exceed 5 percent of the electrical
36 corporation's actual recorded generation revenues for the prior
37 calendar year excluding revenues collected for the Department of
38 Water Resources. The commission shall determine the schedule
39 for amortizing the overcollection or undercollection in the
40 balancing account to ensure that the 5 percent threshold is not

1 exceeded. After January 1, 2006, this adjustment shall occur when
2 deemed appropriate by the commission consistent with the
3 objectives of this section.

4 (4) Moderate the price risk associated with serving its retail
5 customers, including the price risk embedded in its long-term
6 supply contracts, by authorizing an electrical corporation to enter
7 into financial and other electricity-related product contracts.

8 (5) Provide for just and reasonable rates, with an appropriate
9 balancing of price stability and price level in the electrical
10 corporation's procurement plan.

11 (e) The commission shall provide for the periodic review and
12 prospective modification of an electrical corporation's procurement
13 plan.

14 (f) The commission may engage an independent consultant or
15 advisory service to evaluate risk management and strategy. The
16 reasonable costs of any consultant or advisory service is a
17 reimbursable expense and eligible for funding pursuant to Section
18 631.

19 (g) The commission shall adopt appropriate procedures to ensure
20 the confidentiality of any market sensitive information submitted
21 in an electrical corporation's proposed procurement plan or
22 resulting from or related to its approved procurement plan,
23 including, but not limited to, proposed or executed power purchase
24 agreements, data request responses, or consultant reports, or any
25 ~~combination~~, *combination of these*, provided that the Office of
26 Ratepayer Advocates and other consumer groups that are
27 nonmarket participants shall be provided access to this information
28 under confidentiality procedures authorized by the commission.

29 (h) Nothing in this section alters, modifies, or amends the
30 commission's oversight of affiliate transactions under its rules and
31 decisions or the commission's existing authority to investigate and
32 penalize an electrical corporation's alleged fraudulent activities,
33 or to disallow costs incurred as a result of gross incompetence,
34 fraud, abuse, or similar grounds. Nothing in this section expands,
35 modifies, or limits the Energy Commission's existing authority
36 and responsibilities as set forth in Sections 25216, 25216.5, and
37 25323 of the Public Resources Code.

38 (i) An electrical corporation that serves less than 500,000 electric
39 retail customers within the state may file with the commission a

1 request for exemption from this section, which the commission
2 shall grant upon a showing of good cause.

3 (j) (1) Prior to its approval pursuant to Section 851 of any
4 divestiture of generation assets owned by an electrical corporation
5 on or after the date of enactment of the act adding this section, the
6 commission shall determine the impact of the proposed divestiture
7 on the electrical corporation's procurement rates and shall approve
8 a divestiture only to the extent it finds, taking into account the
9 effect of the divestiture on procurement rates, that the divestiture
10 is in the public interest and will result in net ratepayer benefits.

11 (2) Any electrical corporation's procurement necessitated as a
12 result of the divestiture of generation assets on or after the effective
13 date of the act adding this subdivision shall be subject to the
14 mechanisms and procedures set forth in this section only if its
15 actual cost is less than the recent historical cost of the divested
16 generation assets.

17 (3) Notwithstanding paragraph (2), the commission may deem
18 proposed procurement eligible to use the procedures in this section
19 upon its approval of asset divestiture pursuant to Section 851.

20 (k) The commission shall direct electrical corporations to include
21 in their proposed procurement plans the integration costs described
22 and determined pursuant to clause (v) of subparagraph (A) of
23 paragraph (4) of subdivision (a) of Section 399.13.

24 SEC. 2. Section 921 is added to the Public Utilities Code, to
25 read:

26 921. To the extent that additional procurement is authorized
27 for the electrical corporation in the integrated resource plan or the
28 procurement process authorized pursuant to Section 454.5, the
29 commission shall demonstrate to the Legislature, in a report
30 submitted pursuant to Section 9795 of the Government Code not
31 more than 60 days after the commission issues a final decision
32 approving new capacity additions in excess of 100 megawatts, that
33 the prioritized procurement of energy efficiency and demand
34 reduction resources required by subparagraph (C) of paragraph
35 (9) of subdivision (b) of Section 454.5 is achieved.

36 SEC. 3. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

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